



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

The tenant applies to recover a \$625.00 security deposit doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”) and an undisputed \$201.61 payment for returning possession before the end of the tenancy.

The landlord filed material to indicate she had a counterclaim for damage to the stove top in the rental unit. Though the landlord had not yet brought a formal application for damages regarding the stovetop, the tenant agreed to have the landlord’s claim dealt with at this hearing.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to recover damages for damage to the stovetop?

### Background and Evidence

The rental unit is a one bedroom townhouse. The tenancy started in April 2013 and ended August 31, 2013. The monthly rent was \$1250.00. The landlord holds a \$625.00 security deposit.

The tenant agreed to leave early to accommodate the new tenant and the landlord agreed to pay \$201.61. The landlord actually gave the tenant cheques for the \$201.61 and \$625.00 security deposit, but before the cheques could be cashed, the landlord cancelled them as the new tenant or perhaps the landlord and the new tenant discovered that the black glass stovetop was damaged.

The landlord testified that she did not see the stovetop damage when she and the applicant tenant walked through the house before she gave him the two cheques. She says that the incoming tenant saw it and took a picture of the damage. Her undisputed evidence is that the stove was new when the applicant tenant moved in and that the cost of replacing the stove top is \$757.48.

The black glass stove top shows considerable grime buildup or perhaps scuffing around the circumference of its rings. However, in one spot on one ring there is significant pitting or chipping of the glass an area of perhaps a 5.0 cm diameter. The damage is not wear. It is consonant with something of considerable weight having been dropped on it. I find that is damage and not reasonable wear and tear.

The tenant denies the damage occurred during his tenancy.

### Analysis

Firstly, clearly the landlord agreed to pay the \$201.61 and the tenant must be paid or credited that amount.

As well, clearly the landlord has failed to comply with s.38 of the *Act*. The tenancy ended in August, she had the tenant's written forwarding address shortly after, she has neither the tenant's written authority nor that of a Residential Tenancy arbitrator to keep it and she did not either repay the deposit or make application to keep it within the fifteen day period prescribed by s.38. She must account to the tenant for \$1250.00; double the deposit.

I find it unlikely that the damage to the stove top occurred between the time the tenant left and the new tenant moved in. Far more likely is that the damage occurred before the tenant vacated and that it was not reasonably observable by the landlord during her rather cursory inspection of the rental unit.

The stove was virtually new. I find the landlord is entitled to the reasonable repair cost. The evidence shows that cost to be \$757.48 and I award that sum to the landlord.

Conclusion

The tenant is entitled to a monetary award totalling \$1451.61. He does not claim recovery of a filing fee. The landlord is entitled to a monetary award of \$757.48. The tenant is entitled to a monetary order against the landlord for the difference of \$694.13

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 14, 2014

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Residential Tenancy Branch

